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on behalf of himself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

EDUARDO RIVERA, on behalf of
himself and all others similarly situated

Plaintiff,

vs.

ALLCOM ELECTRIC, INC. a California
Corporation, and DOES 1 through 50,
inclusive.

Defendant.

Case No. 30-2020-01123366-CU-OE-CXC
ASSIGNED FOR ALL PURPOSES TO:
JUDGE: Hon. Peter Wilson
DEPT: CX-102

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
DECLARATION OF JAMES R. HAWKINS
IN SUPPORT THEREOF; [PROPOSED]
ORDER**

Date: April 7, 2022
Time: 2:00 p.m.
Dept.: CX-102

PLEASE TAKE NOTICE THAT on, April 7, 2022 at 2:00 p.m. in Department CX-102, of the above-entitled court located at the, Civil Complex Center – 751 West Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff Eduardo Rivera (“Plaintiff”) will and hereby does move the Court for an Order (1) provisionally certifying the Class for Settlement purposes only; (2) provisionally approving James Hawkins and Isandra Fernandez from the law firm of James Hawkins, APLC, as counsel for Plaintiff and the Class Members in this matter, (3) provisionally approving Eduardo Rivera as the Class Representative; (4) approving Simpluris, Inc. as the Settlement Administrator; (5) preliminarily approving the class action settlement; and (6) approving and directing distribution of the Notice of Class Action and PAGA Settlement.

This Motion is made pursuant to Rule 3.769 of the California *Rules of Court*, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify a class for settlement purposes. The basis for this Motion is that the proposed Settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to participate in, opt out of, or object to the Settlement.

This Motion will be based on the Memorandum of Points and Authorities included herein, the Declaration of James R. Hawkins, the Joint Stipulation of Class Action and PAGA Settlement Agreement and Release of Claims attached to the Declaration of James R. Hawkins as Exhibit A, and upon the oral arguments of counsel (should there be any) and upon the complete records and file herein.

DATED: March 2, 2022

JAMES HAWKINS APLC

By: Isandra Fernandez
James R. Hawkins, Esq.
Isandra Y. Fernandez, Esq.
Kacey E. Cook, Esq.

Attorneys for Plaintiff
Eduardo Rivera

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On January 13, 2020, Plaintiff Eduardo Rivera (“Rivera”) filed this wage and hour class
4 action (“Lawsuit” or “Action”) on behalf of himself and all employees employed by, or formerly
5 employed by Allcom Electric, Inc., (hereinafter “Defendant” and/or “Allcom”) (Plaintiff and
6 Defendant collectively referred to as “Parties”) who occupied non-exempt hourly positions in the
7 state of California (“Class Action Complaint”). The Lawsuit seeks recovery of alleged unpaid
8 wages, premium wages and penalties pursuant to California Labor Code, California Industrial
9 Welfare Commission (“IWC”) Wage Order No.7-2001, Bus. & Prof. Code § 17200 and PAGA.
10 The action further seeks an award of attorneys’ fees, interest and costs. Allcom denies the claims
11 alleged and disputes any liability for the damages sought.

12 Subject to Court approval, the Parties have reached a settlement of the claims asserted on
13 behalf of the class and representative PAGA group in this Lawsuit for a total of Four Hundred
14 Forty Nine Thousand Four Hundred Seventeen Dollars \$449,417.73 (hereinafter “Gross
15 Settlement Amount” or “GSA”), which includes the individual settlement payments to the
16 class/PAGA group members, attorneys’ fees and costs, Class Representative enhancement
17 payment, the costs of the settlement administrator, and payment to the California Labor
18 Workforce Development Agency (“LWDA”) under PAGA (the “Settlement”). **This is a cash**
19 **settlement.** Every Class Member who does not opt out of the Settlement will automatically be
20 mailed an individual settlement payment. However, every Class Member who is also within the
21 PAGA group will be mailed their respective individual settlement payment associated with the
22 PAGA penalty portion of the settlement amount regardless of opt-out status. There is no claims
23 filing process, and Class Members do not have to file a claim to be mailed a payment.

24 As discussed more thoroughly below, the proposed Settlement satisfies all of the criteria
25 for preliminary settlement approval under California law and falls well within the range of proper
26 approval. As such, Plaintiff moves this Court to: (i) provisionally certify the proposed Settlement
27 Class; (ii) provisionally approve James Hawkins and Isandra Fernandez from the law firm of
28 JAMES HAWKINS, APLC as class counsel for Plaintiff and the Class in this matter; (iii)

1 provisionally approve named Plaintiff Eduardo Rivera as the class representatives; (iv) appoint
2 Simpluris, Inc. as the settlement administrator; (v) grant preliminary approval of the Joint
3 Stipulation of Class and PAGA Settlement and Release of Claims (hereinafter “Settlement
4 Agreement”); (vi) direct distribution of the Notice of Class Action and PAGA Settlement on the
5 terms and conditions set forth in the Settlement Agreement; and (vii) schedule a final approval
6 hearing.

7 **II. FACTUAL BACKGROUND**

8 On January 13, 2020, Plaintiff Eduardo Rivera (“Rivera”) initiated this action in the
9 Superior Court for the County of Orange on behalf of himself and all others similarly situated,
10 styled *Eduardo Rivera v. Allcom Electric, Inc.* Orange County Superior Court Case No. 30-2020-
11 01123366 (the “Lawsuit”). The Complaint asserts causes of action for; (1) failure to pay lawful
12 wages including overtime wages; (2) failure to provide lawful meal periods or compensation in
13 lieu thereof; (3) failure to provide lawful rest periods or compensation in lieu thereof; (4) failure
14 to pay timely wages; (5) failure to indemnify employee expenses (6) knowing and intentional
15 failure to comply with itemized employee wage statement provisions; and (7) violations of the
16 unfair competition law (Bus. & Prof. Code § 17200 *et seq.*) (the “Action”). (See Declaration of
17 James R. Hawkins “Hawkins Decl.” ¶ 2.) On January 14, 2020, Eduardo Rivera provided notice
18 to the Labor and Workforce Development Agency (“LWDA”) of his intent to add one additional
19 cause of action for violations of the Labor Code Private Attorney General Act (“PAGA”)
20 (Hawkins Decl. ¶ 3). On April 17, 2020, Rivera filed a First Amended Complaint, which
21 included one additional cause of action for violations under PAGA (Hawkins Decl. ¶ 4).

22 Plaintiff brings this action pursuant to Labor Code 201, 202, 203, 204, 226, 226.7, 510,
23 512, 1194, 1199, 2802, 2699 and California Code of Regulations, Title 8, section 11050 *et seq.*
24 seeking unpaid lawful wages, unpaid rest and meal period compensation, penalties and other
25 equitable relief, and reasonable attorneys’ fees and costs. Pursuant to Business and Professions
26 Code sections 17200 through 17208, Plaintiff also seeks restitution for unpaid wages and claims
27 for civil penalties pursuant to or based on these sections can only be recovered in a PAGA action.

28 Throughout this litigation, Defendant has denied Plaintiff’s allegations and raised defenses

1 to the claims, individually and on a representative basis. (Hawkins Decl. ¶ 5.)¹ Defendant
2 maintains that its employment policies and practices meet the requirements of the Labor Code
3 and applicable Wage Orders. (*Id.*) To date, no motion for class certification has been filed, no
4 class has been certified and the Court has not made any findings that Allcom engaged in any
5 wrongdoing or in violation of any state law, rule or regulation, with respect to the issues
6 presented in the litigation. (Hawkins Decl. ¶ 6.)

7 Through informal discovery, Plaintiff and Allcom have exchanged documents and
8 information related to the claims asserted (Hawkins Decl. ¶ 7.). Defendant has produced timecard
9 records and wage reports and also provided Plaintiff with class data and samples of time records,
10 wage statements, information regarding the number of non-exempt employees during the relevant
11 time period. (*Id.*)

12 After conducting informal discovery, exchanging relevant information and engaging in
13 numerous discussions regarding the claims alleged, on July 14, 2021, the parties participated in a
14 private mediation with Hon. Steven Vartabedian (Ret.). (Hawkins Decl. ¶ 8.) During the course of
15 the mediation, the parties exchanged further information and documentation concerning
16 Plaintiff's claims and Allcom's defenses thereto, and aggressively advocated for their respective
17 positions. (*Id.*)

18 At the conclusion of the mediation, the parties reached a settlement of this Action for a
19 maximum settlement amount of Four Hundred Forty-Nine Thousand Four Hundred Seventeen
20 Dollars and Seventy Three Cents (\$449,417.73). (Hawkins Decl. ¶ 9.) Following the mediation,
21 the parties exchanged various drafts of the Memorandum of Understanding ("MOU") (*Id.*) The
22 MOU was executed by the Parties on or about September 15, 2021 (*Id.*). Thereafter, the Parties
23 exchanged multiple drafts of the proposed settlement agreement and class notice documents and
24 engaged in communications regarding the settlement terms (*Id.*) The final terms and provisions of
25

26
27 ¹ After Plaintiff filed the Complaint, Defendant filed a petition to compel arbitration of Plaintiff's individual claims.
28 On November 19, 2020, the Court denied Defendant's petition. Defendant filed an appeal in the Fourth District
Court of Appeal which is currently stayed.

1 the settlement agreement were approved and executed by all the parties on or about March 2,
2 2022. (Hawkins Decl. ¶ 10; Exhibit 1- Settlement Agreement).

3 Based on his own respective independent investigations and evaluations and after taking
4 into account the sharply disputed factual and legal issues involved in this matter, the risks
5 attending further prosecution in light of certification issues faced due to the *Brinker Rest. Corp. v.*
6 *Super. Ct.*, (2012) 53 Cal. 4th 1004 (“*Brinker*”) decision, the discovery and investigation
7 conducted to date, Plaintiff and his counsel are of the opinion that settlement for the consideration
8 and on the terms set forth in the Settlement Agreement is fair, reasonable and adequate and is in
9 the best interests of the named Plaintiff and Class Members. (Hawkins Decl. ¶ 11.)

10 **III. SUMMARY OF SETTLEMENT TERMS**

11 **A. Class Members**

12 The Parties request the Court certify a class (the “Class”) as follows for the purpose of this
13 Settlement. “Class” is defined as: All persons who are or were employed by Defendant as non-
14 exempt, hourly-paid employees in California from January 13, 2016, through preliminary
15 approval (the “Class Period”). “Class Members” means members of the Class. (Settlement
16 Agreement p.1 ¶¶ 2, 6, 7.)

17 **B. Funding and Allocation of the Gross Settlement Amount**

18 1. In exchange for the releases set forth in the Settlement Agreement, Defendant shall
19 pay the Gross Settlement Amount in the total amount of \$449,417.73 (“Gross Settlement
20 Amount” or “GSA”) (Settlement Agreement, p. 4, ¶ 43). “Gross Settlement Amount” means the
21 maximum sum to be paid by Defendant pursuant to the Settlement, which is \$449,417.73 based
22 on \$400,000 new money to be paid by Defendant plus \$49,417.73 already paid in settlement to
23 sixty one (61) present employees and one former employee. The Gross Settlement Amount shall
24 include all payments contemplated by the Settlement Agreement, including all Individual
25 Settlement Payments to Settlement Class Members, the Service Award to Plaintiff, the Class
26 Counsel Award to Class Counsel, the PAGA Penalties, and the Settlement Administration Costs
27 to the Settlement Administrator. The Gross Settlement Amount shall not include Defendant’s
28 share of taxes on the wages portion of Individual Settlement Payments, which will be paid by

1 Defendant separately and in addition to the Gross Settlement Amount (Settlement Agreement, p.
2 2, ¶ 18).

3 2. Upon satisfaction of the preconditions described in the Settlement Agreement, and
4 pursuant to the timeline and instructions below, Defendant will deposit the Gross Settlement
5 Amount into a Qualified Settlement Fund to be established by the Settlement Administrator
6 (Settlement Agreement, p. 9, ¶ 53)

7 3. No later than twenty (20) days after the Effective Date, Defendant shall provide
8 the Gross Settlement Amount to the Settlement Administrator to fund the Settlement Agreement
9 (Settlement Agreement, p. 9, ¶ 53(a)).

10 4. “Net Settlement Amount” means the Gross Settlement Amount minus the Service
11 Award, the Class Counsel Award, the LWDA Payment, and the Settlement Administration Costs
12 (Settlement Agreement, p. 2, ¶ 19). “Individual Settlement Payment” means the amount payable
13 from the Net Settlement Amount to each Settlement Class Member (Settlement Agreement, p. 2 ¶
14 17). Each Individual Settlement Payment will be reduced by any legally mandated employee tax
15 withholdings (e.g., employee payroll taxes, etc.) on the wages portion of the Individual
16 Settlement Payment. The Individual Settlement Payment checks will include an endorsement
17 confirming that by cashing the check, each Settlement Class Member is releasing the Released
18 Claims (Settlement Agreement, p. 9, ¶ 53 (b)(i)).

19 5. Individual Settlement Payments shall be mailed by First Class U.S. Mail to each
20 Settlement Class Member no later than fourteen (14) calendar days after Defendant provides
21 funds to the Settlement Administrator for disbursement under the Settlement Agreement
22 (Settlement Agreement, pp. 9-10 ¶ 53 (b)(iii)).

23 6. “Settlement Administrator” means Simpluris, Inc., as approved by the Court
24 (Settlement Agreement, p. 3, ¶ 34). The Settlement Administrator will be responsible for issuing
25 to Settlement Class Members an IRS Form W-2 for any amounts deemed “wages” and an IRS
26 Form 1099 for the portions allocated to non-wage amounts, including penalties and interest. For
27 tax purposes, each Individual Settlement Payment shall be allocated as follows: a) one third to
28 penalties/other payments and one third to interest for which an IRS Form 1099 will be issued; b)

1 one third as wages subject to IRS Form W-2 reporting and applicable taxes/withholdings
2 (Settlement Agreement, p. 9, ¶ 53 (b)(ii))

3 7. Any checks issued to Settlement Class Members shall remain valid and negotiable
4 for one hundred and eighty (180) calendar days after the date they are issued. In the event that an
5 Individual Settlement Payment check has not been cashed within one hundred and eighty (180)
6 calendar days, then such funds, plus any accrued interest, will be tendered according to
7 California Civil Procedure Code § 384. The Settlement Administrator shall prepare a report
8 regarding the extent of unclaimed funds, and the report shall be presented to the Court by Class
9 Counsel (Settlement Agreement, p. 10, ¶ 53 (b)(iv)).

10 8. Subject to Court approval, Defendant agrees not to oppose or object to a Class
11 Representative Service Award in an amount not to exceed \$6,000 in exchange for Class
12 Representative's general release of claims, including the Released Claims, and for his time, effort
13 and risk in bringing and prosecuting this matter. The Service Award shall be in addition to the
14 Class Representative's Individual Settlement Payment as a Settlement Class Member (Settlement
15 Agreement p.10, ¶ 53(c)).

16 9. The Settlement Administrator shall pay the Service Award to Class Representative
17 from the Gross Settlement Amount within fourteen (14) calendar days after Defendant funds the
18 Gross Settlement Amount. Any portion of the requested Service Award that is not awarded to the
19 Class Representative shall become part of the Net Settlement Amount. The Settlement
20 Administrator shall issue an IRS Form 1099 - MISC to the Class Representative for the Service
21 Award. The Class Representative shall be solely and legally responsible to pay any and all
22 applicable taxes on the Service Award (Settlement Agreement p.10, ¶ 53 (c)(i-ii)).

23 10. Subject to Court approval, the Plaintiff shall seek an award of attorneys' fees not
24 to exceed \$150,000 (33.33% of the Gross Settlement Amount), and reimbursement of actual costs
25 and expenses as supported by declaration not to exceed \$20,000 (Settlement Agreement pp.10-11,
26 ¶ 53 (d)(i)).
27
28

1 11. The Settlement Administrator shall pay the Class Counsel Award to Class Counsel
2 from the Gross Settlement Amount within fourteen (14) calendar days after the Gross Settlement
3 Amount is funded (Settlement Agreement pp.10-11, ¶ 53 (d)(iv)).

4 12. Subject to Court approval, the amount of \$25,000 shall be allocated from the Gross
5 Settlement Amount for the release of claims for civil penalties under the Private Attorneys
6 General Act of 2004. The Settlement Administrator shall pay seventy-five percent (75%) of the
7 PAGA Penalties, or \$18,750, to the California Labor and Workforce Development Agency (the
8 “LWDA Payment”) within fourteen (14) calendar days after Defendant provide funds to the
9 Settlement Administrator for disbursement under the Settlement Agreement. Twenty-five (25%)
10 of the PAGA Penalties, or \$6,250, will remain part of the Net Settlement Amount and distributed
11 to Settlement Class Members as described in the Settlement Agreement. Plaintiff will take all
12 actions required by California Labor Code section 2699(l). (Settlement Agreement p.11, ¶ 53(e)).

13 13. Subject to Court approval, the Settlement Administrator shall be paid for the costs
14 of administration of the Settlement Agreement from the Gross Settlement Amount. Based upon
15 estimates received, the Settlement Administrator Costs shall not exceed \$7,600. The Settlement
16 Administrator shall be paid the Settlement Administrator Costs within fourteen (14) calendar days
17 after Defendant provides funds to the Settlement Administrator for disbursement under the
18 Settlement Agreement (Settlement Agreement p.11, ¶ 53 (f)).

19 **C. Released Claims Summary**

20 1) Release by Settlement Class Members

21 “Settlement Class Member” ” or “Settlement Class” means Class Members who do not
22 submit a timely and valid Request for Exclusion and will be bound by the terms of the
23 Agreement, including the Released Claims, and any final judgment entered in the Action
24 (Settlement Agreement p. 3, ¶ 36) “Released Parties” means Defendant, and its owners, sureties,
25 bonding companies, insurers, attorneys, agents, and related entities (Settlement Agreement p.3, ¶
26 30). “Released Claims” means any and all claims, debts, liabilities, demands, obligations,
27 guarantees, costs, expenses, attorneys’ fees, damages, or causes of action contingent or accrued
28 for, that are pleaded, or that could have been pleaded, based on the facts and claims alleged in the

1 Action, including any claims for: (1) failure to pay lawful wages; (2) failure to provide meals
2 periods; (3) failure to provide rest periods; (4) failure to timely pay all wages due at termination;
3 (5) failure to provide accurate wage statements; (6) failure to reimburse business expenses (8)
4 unfair competition; and (9) civil penalties, Labor Code § 2699, predicated on any of the violations
5 of the California Labor Code and applicable IWC Wage Order alleged in the Complaint and/or
6 the PAGA Letter, including compensatory damages; economic and/or special damages; premium
7 wages; premium pay; penalties; attorneys' fees; interest; and litigation costs) premised on the
8 facts, claims, or legal theories described herein or in the Action; any other claims or penalties
9 under the wage and hour laws pleaded in the Action and the PAGA Letter under California and
10 federal law, including the California Labor Code and the applicable Wage Orders as to the facts
11 and theories alleged in the Action and the PAGA Letter (collectively, the "Released Claims.")
12 The period of the Release shall extend to the limits of the Class Period. The res judicata effect of
13 the Judgment will be the same as that of the Release. (Settlement Agreement p.3, ¶ 29).

14 The release here is a common type of release found in class action settlements. This type
15 of release has been approved in both state and federal courts. (*Villacres v. ABM Industries, Inc.*
16 (2010) 189 Cal.App.4th 562, 586 ["the weight of authority establishes that ... a court may release
17 not only those claims alleged in the complaint and before the court, but also claims which 'could
18 have been alleged by reason of or in connection with any matter or fact set forth or referred to in'
19 the complaint"]; *Hesse v. Sprint Corp.* (9th Cir. 2009) 598 F.3d 581, 591 ["a state court's
20 approval of a settlement agreement could release not only the state law fraudulent billing claims
21 before it, but also federal RICO claims arising from the same billing practices"].)

22 Likewise, it is perfectly permissible for releases to release more than simply the named
23 defendant in the class action. (See, e.g., *Villacres*, 189 Cal.App.4th at p. 573 [enforcing a class
24 action settlement that released the named defendant and "its affiliates, subsidiaries, parent,
25 successors-in-interest, and assigns, and all of their present, former and future offices, directors,
26 shareholders, employees, agents, attorneys, insurers, and representatives ..."]; *Reyn's Pasta*
27 *Bella, LLC v. Visa USA, Inc.* (9th Cir. 2006) 442 F.3d 741, 748 ["A class settlement may also
28 release factually related claims against parties not named as defendants"].) Indeed, a class action

1 settlement would have little value to the settling defendant if, minutes after the settlement
2 agreement obtained final court approval, the plaintiff could simply turn around and sue the
3 defendant's officers, directors, employees or agents for the same alleged wrongful acts. (*Wal-*
4 *Mart Stores, Inc. v. Visa U.S.A. Inc.* (2nd Cir. 2005) 396 F.3d 96, 106 ["Broad class action
5 settlements are common, since defendants and their cohorts would otherwise face nearly limitless
6 liability from related lawsuits"].)

7 2) Representative Plaintiff's General Release

8 As of the Effective Date, Plaintiff agrees to release all claims known or unknown, accrued
9 or unaccrued, he has or may have against Defendant and the Released Parties, including
10 execution of a California Civil Code section 1542 release and waiver (Settlement Agreement p.5,
11 ¶ 45).

12 **D. Notice Procedure**

13 Class Data

14 Defendant shall provide the Settlement Administrator with the Class Data within fourteen
15 (14) calendar days after the Preliminary Approval Date. Within fourteen (14) calendar days of
16 receiving the Class Data, the Settlement Administrator shall prepare and mail the Notices to the
17 Settlement Class Members. (Settlement Agreement p. 6, ¶ 52(a)). "Class Data" means
18 information regarding Class Members that Defendant provides to the Settlement Administrator
19 from its records. It shall be formatted as a Microsoft Excel spreadsheet and shall include each
20 Class Member's full name, last known address, last known telephone number, and Social Security
21 number; as well as information sufficient to allow the Settlement Administrator to calculate the
22 number of Workweeks for all Class Members during the Class Period (Settlement Agreement p. 1
23 ¶ 5).

24 Notices

25 The Notice shall inform Class Members to notify the Settlement Administrator of their
26 current mailing address and the address where their Individual Settlement Payment should be
27 mailed following the Effective Date, if the addresses are different from the address that the Notice
28 is initially mailed. The Notice shall include the release to be given by each Settlement Class

1 Member in exchange for the Individual Settlement Payment. (Settlement Agreement p.6, ¶
2 52(b)(i)).

3 Notice By First Class U.S. Mail.

4 After receiving the Class Data from Defendant as provided herein, the Settlement
5 Administrator shall mail copies of the Notice to all Class Members via First Class U.S. Mail. The
6 Settlement Administrator shall exercise its best judgment to determine the current mailing address
7 for each Class Member (Settlement Agreement p.6, ¶ 52(c)).

8 Undeliverable Notices

9 Any Notices returned to the Settlement Administrator as undeliverable on or before the
10 Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding
11 address is provided, the Settlement Administrator shall promptly attempt to determine a correct
12 address by lawful use of standard search techniques and shall then perform a re-mailing if another
13 mailing address is identified by the Settlement Administrator. Class Members who received a re-
14 mailed Notice shall have their Response Deadline extended fifteen calendar (15) days from the
15 original Response Deadline. (Settlement Agreement p. 7, ¶ 52(d)).

16 Disputes Regarding Individual Settlement Payments.

17 Settlement Class Members will have the opportunity, should they disagree with the
18 estimated number of Workweeks stated on their Notice, to provide documentation and/or an
19 explanation to show contrary employment dates. If there is a dispute, the Settlement
20 Administrator will consult with the Parties to determine whether an adjustment is warranted.
21 (Settlement Agreement p. 7, ¶ 52(e)).

22 Disputes Regarding Administration of Settlement Agreement

23 Any disputes not resolved by the Settlement Administrator concerning the administration
24 of the Settlement Agreement will be resolved by the Court under the laws of the State of
25 California. Prior to any such involvement of the Court, counsel for the Parties will confer in good
26 faith to resolve the disputes without the necessity of involving the Court. (Settlement Agreement
27 p. 7, ¶ 52(f)).
28

1 Requests for Exclusion

2 The Notice shall include an explanation that Class Members who wish to exclude
3 themselves from the Settlement Agreement must submit a written Request for Exclusion to the
4 Settlement Administrator by the Response Deadline. (Settlement Agreement p. 7, ¶ 52(g)(i)).

5 No later than five (5) court days after the Response Deadline, the Settlement
6 Administrator shall provide counsel for the Parties with a final list of the Class Members who
7 have timely submitted written Requests for Exclusion (Settlement Agreement p. 8, ¶ 52(g)(iv)).

8 At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
9 Class Members to submit Requests for Exclusion (Settlement Agreement p. 8, ¶ 52(g)(v)).

10 Objections

11 The Notice shall state that Settlement Class Members who wish to object to the Settlement
12 Agreement may mail to the Settlement Administrator a written statement of objection (“Notice of
13 Objection”) by the Response Deadline. The postmark date of the mailing shall be deemed the
14 exclusive means for determining that a Notice of Objection was served timely (Settlement
15 Agreement p. 8, ¶ 52(h)(i)).

16 Defendant, Plaintiff and Class Counsel shall not be responsible for the fees, costs, or
17 expenses incurred by Settlement Class Members arising from or related to any objection to the
18 Settlement Agreement (Settlement Agreement p. 9, ¶ 52(h)(vi)).

19 **IV. CALIFORNIA RULES OF COURT § 3.769 APPROVAL PROCESS**

20 A class action may not be dismissed, compromised or settled without approval of the
21 Court. (*Wershba v. Apple Computer, Inc.*, (2001) 91 Cal. App. 4th 224, 240; Cal. Rules of Court,
22 Rule 3.769.) The approval or rejection of the proposed settlement is committed to this Court’s
23 sound discretion. (*Wershba*, 91 Cal. App. 4th at 234-235.) A court’s decision to approve a class
24 action settlement may be reversed only upon a strong showing of “clear abuse of discretion.”
25 (*Class Plaintiffs v. City of Seattle*, (9th Cir. 1992) 955 F.2d 1268, 1276.) The purpose of the
26 court’s preliminary evaluation of the proposed settlement is to determine whether it is within the
27 “range of reasonableness” and thus, whether the notice to the class is appropriate. (NEWBERG,
28 §11.25 at 11-36-37.)

1 According to this procedure, Plaintiff requests this Court to provisionally certify the
2 proposed class for settlement purposes – conditional upon final approval of the settlement. The
3 practical purpose of provisional class certification is to facilitate distribution to all Class Members
4 of notice of the terms of the proposed Settlement and the date and time of the final approving
5 hearing. Additionally, Plaintiff requests this Court to preliminarily approve the Settlement as fair,
6 adequate and reasonable as set forth below.

7 **V. PRELIMINARY APPROVAL OF SETTLEMENT IS APPROPRIATE**

8 The law favors settlement, particularly in class actions and other complex cases in which
9 substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation.
10 (*City of Seattle* 955 F.2d at 1276; *Potter v. Pacific Coast Lumber Company*, (1951) 37 Cal. 2d.
11 592, 602-603.; 4 NEWBERG § 11.41.) To grant preliminary approval of this class action
12 settlement, the Court need find only that the settlement falls within the “range of reasonableness.”
13 (*North County Contractor’s Ass. Inc. v. Touchstone Ins. Svcs.*, (1994) 27 Cal. App. 4th 1085,
14 1089-1090.) In determining whether a class settlement is fair, adequate and reasonable, courts
15 must consider the following relevant factors: the strength of the plaintiff’s case, the risk, expense,
16 complexity and likely duration of further litigation, the risk of maintaining class action status
17 through trial, the amount of offered settlement, the extent of discovery completed and the range of
18 the proceedings, and the experience and views of counsel. (*Dunk v. Ford Motor Co.*, (1996) 48
19 Cal. App. 4th 1794, 1801; *Clark v. American Residential Services, LLC*, (2009) 175 Cal. App.
20 4th. 785,799.) The list of factors is not exclusive and the court is free to engage in a balancing and
21 weighing of the factors depending on the circumstances of each case.” (*Clark*, 175 Cal. App. 4th
22 at 799; *Wershba*, 91 Cal. App. 4th at 245.)

23 Furthermore, courts must give “proper deference to the private consensual decision of the
24 parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement
25 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a
26 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
27 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
28 adequate to all concerned.” (*Hanlon v. Chrysler Corp.*, (9th Cir. 1998), 150 F.3d 1011, 1027.)

1 **A. The Terms of the Proposed Settlement are Fair**

2 A preliminary review of the terms of the Settlement Agreement provides no reason to
3 doubt its fairness. A presumption of fairness exists where: 1) the settlement is reached through
4 arms-length negotiations; 2) investigation and discovery are sufficient to allow counsel and the
5 court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of
6 objectors is small. (*Dunk v. Ford Motor Co.*, *supra*, at 1802.) The first three of these factors apply
7 at the preliminary approval stage; the percentage of objectors is determinable only at the final
8 approval stage.

9 1. **The Settlement Was Reached Through Extensive Arm's Length Bargaining and**
10 **Based on the Recommendation Proposed by the Mediator**

11 As already discussed herein, the Parties have conducted themselves in informed, good
12 faith arm's-length negotiations after exchanging extensive information about the claims and
13 defenses of this lawsuit and engaging in pre-mediation and post mediation discussions aimed at
14 settling their dispute. In attempts to settle this lawsuit, the Parties participated in a full day
15 mediation with Hon Steven Vertabedian (Ret.) (Hawkins Decl. ¶ 8.) In sum, armed with all of the
16 relevant information and with the help of an experienced mediator, counsel for the parties
17 participated in lengthy, serious and informed negotiations which has resulted in the proposed
18 Settlement Agreement that is now placed before this Court.

19 2. **Investigation and Discovery Were Sufficient For the Parties to Evaluate the Risks**
20 **Intelligently**

21 Plaintiff has conducted significant investigation of the facts and law both before and after
22 the Action was filed. Plaintiff's counsel reviewed supporting documents provided by Defendant
23 through informal discovery and in exchanges of information in preparation for mediation.
24 (Hawkins Decl. ¶¶ 7-8.).

25 3. **Plaintiff's Counsel is Experienced in Similar Litigation**

26 Moreover, counsel for Plaintiff has represented, mediated and settled other employee class
27 actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the
28

1 claims against Allcom and the benefits of the proposed Settlement under the circumstances of the
2 case. (Hawkins Decl. ¶¶ 12,13).

3 **B. The Settlement Provides for Reasonable Compensation to Class Members**

4 Even without the presumption of fairness and reasonableness, the Settlement clearly is
5 within the range of reasonableness. The predominant claims in this action arise from alleged
6 violations of California law with respect to meal and rest breaks. Specifically, Plaintiff alleges
7 that due to the work load requirements, he and class members were frequently not provided a
8 minimum, uninterrupted 30 minutes meal break before the end of the fifth hour of their work
9 shift. (Hawkins Decl. ¶ 14.) Plaintiff also alleges that he and Class Members were not provided a
10 second 30 minute meal period when he worked shifts in excess of 10 hours. (*Id.*) Similarly, with
11 respect to the rest break claim, Plaintiff alleges that due to the work load requirements, he and
12 class members were unable to take a minimum ten minute rest break for every four hours or
13 major fraction thereof worked during their shifts. (Hawkins Decl. ¶ 15.)

14 Allcom denies Plaintiff's' allegations and maintains that class members were provided
15 with the opportunity to take all meal and rest periods to which they were entitled. Allcom also
16 maintained that Plaintiff's' claims were improper for class treatment. (Hawkins Decl. ¶ 16.)

17 Based on documents and information produced by Defendant in discovery, in preparation
18 for mediation and during settlement negotiations, Plaintiff's' counsel estimated a maximum
19 potential liability of \$ 1,633,1676 for the class claims, assuming Plaintiff and the Class were able
20 to obtain an order certifying the class and were also able to prove their claims. (Hawkins Decl. ¶
21 17.) At the time of mediation the class consisted of 157 Class Members comprised of 103
22 former and 54 current employees. The estimated number of workweeks and work shifts at issue
23 for the class period are 14,796 and 66,582 respectively and the average hourly rate of pay is
24 approximately \$30.00. (Hawkins Decl. ¶ 18.)

25 a. Meal Period Claim

26 The meal period violation claim is based primarily on Allcom's alleged failure to provide
27 an uninterrupted 30-minute meal break by the end of the fifth hour, and were not compensated
28 one hour of pay at their regular rate of compensation for each workday that a meal period was not

1 lawfully provided. Based on Plaintiff's review of the documents and information provided in
2 anticipation of mediation, including a random sample of time records, the estimated maximum
3 potential liability for the meal break claim, based on a 100% violation rate was calculated at
4 \$1,997,460 which assumes a meal break violation during every work shift. However, taking into
5 consideration the nature of the claim, Defendant's defenses and certification issues faced due to
6 *Brinker*, for purposes of settlement, the meal break claim was valued between an estimated
7 maximum of \$798,984 and \$399,492. (Hawkins Decl. ¶ 18(a).)

8 b. Rest Period Claim

9 The rest period violation claim is primarily based on allegations that, due to the work load
10 requirements, Plaintiff and Class Members were not provided compliant 10 minute rest period
11 during their work shifts. Allcom disputes Plaintiff's rest break claim and contends that class
12 members were allowed to take ten minute rest periods and regularly took such breaks. The
13 estimated maximum potential liability for the rest break claim was calculated at \$1,997,460
14 which assumes that a rest break violation occurred during every shift. Taking into consideration
15 the nature of the claim, Defendant's defenses and certification issues faced due to *Brinker*, for
16 purposes of settlement, the rest break claim was valued between an estimated maximum of
17 \$399,492 and \$0. (Hawkins Decl. ¶ 18(b).)

18 c. Lab. Code § 226 Claim (failure to provide accurate itemized wage statements)

19 Under Lab. Code § 226(e), an employee suffering "injury as a result of a knowing and
20 intentional failure by an employer" to provide accurate wage statements is entitled to \$50 for the
21 initial violation and \$100 for each subsequent violation up to \$4,000. Allcom denies that it
22 provided inaccurate wage statements. Further, Allcom argues that, if any wage statements were in
23 fact inaccurate, they did not "knowingly and intentionally" fail to provide accurate statements and
24 that Plaintiff and the class did not suffer any "injury" from such inaccurate wage statements. For
25 purposes of settlement negotiations, said claim was valued between and estimated maximum of
26 \$320,000 and \$0 (Hawkins Decl. ¶ 18(c).)

1 d. Failure to Pay Lawful Wages Claims

2 Plaintiff's claim for failure to pay wages owed is based on allegations that he and Class
3 Members were occasionally required to work off the clock to complete certain tasks for which
4 they did not receive compensation. Allcom disputes this claim and asserts that its policies prohibit
5 employees from working off the clock. This claim would be difficult to certify given the
6 predominance of the individualized inquiry as to the whether and to what extent, each class
7 member performed work off the clock. As such, it was valued at \$0 for purposes of settlement
8 (Hawkins Decl. ¶ 18(d)).

9 e. Labor Code § 2802 Claim (failure to indemnify employee expenses)

10 The business expense reimbursement claim is based on allegations that Plaintiff and class
11 members were required to provide their own tools for the performance of their job duties and
12 were not reimbursed by Defendant. Defendant also failed to reimburse Plaintiff and Class
13 Members for using their personal mobile phones which was required in performance of their job
14 duties (i.e. clocking in and out at the beginning and end of shifts). Defendant denies that Plaintiff
15 and Class Members were required to use their personal phones. Plaintiff calculated a maximum
16 potential liability at \$160,000 assuming \$30 monthly phone reimbursement. However, this claim
17 would be difficult to certify given the predominance of the individualized inquiry as to the
18 whether and to what extent each class member used their personal tools and phones in the
19 performance of their job duties. As such, for purposes of settlement, this claim was valued at \$0.
20 (Hawkins Decl. ¶ 18(e)).

21 f. Lab. Code § 203 Claim (failure to timely pay wages)

22 With respect to Lab. Code §203 claim, there were an estimated 80 former class members
23 to whom this claim applied and an estimated maximum potential liability of \$576,000. However,
24 faced with the willful intent requirement of the enabling statute along with Defendant's position
25 that Lab. Code §203 does not apply to rest and meal break claims, for settlement purposes this
26 claim was valued between \$115,200 and \$0 (Hawkins Decl. ¶ 18(f)).
27
28

1 g. Bus. & Prof. Code § 17200 Claim

2 The only remedies available under the unfair competition law (“UCL”) Business and
3 Professions Code Section 17200 et seq. are restitution and injunction, as opposed to damages
4 *Clark v. Superior Court*, (2010) 50 Cal. 4th 605, 610. The UCL provides that “[t]he court may
5 make such orders or judgments ... as may be necessary to restore to any person in interest any
6 money or property, real or personal, which may have been acquired by means of such unfair
7 competition.” (Bus. & Prof. Code, § 17203.) Restitution under the UCL includes “earned wages.”
8 *Cortez v. Purolator Air Filtration Prods. Co.*, (2000) 23 Cal. 4th 163, 177-78.

9 Restitution under the UCL is not available for all violations of the Labor Code. See
10 *Pineda v. Bank of Am., N.A.*, (2010) 50 Cal. 4th 1389, 1401-02. In *Pineda*, the California
11 Supreme Court held Labor Code § 203 is “not designed to compensate employees for work
12 performed [but] it is intended to encourage employers to pay final wages on time, and to punish
13 employers who fail to do so.” *Id.* Like Labor Code section 203, section 226 for wage statement
14 violations is also intended to “punish” the employer and is not an action brought to recover
15 wages. See *Gomez v. Jacobo Farm Labor Contractor, Inc.*, (2019) 334 FRD. 234, 267-268.

16 Here, Plaintiff’s’ UCL claim is solely premised on the failure to pay lawful wages and
17 premium wages claims discussed above. Class Counsel assigned a zero dollar value to the UCL
18 claim because it does not provide any additional value in this Action other than to increase the
19 statute of limitations to four years for the underlying claims. Those claims are valued and
20 analyzed above based on the four year statute of limitations provided by the UCL. However, the
21 UCL claim in and of itself does not provide any additional damages. Therefore, there is no
22 additional or separate monetary value that this statute provides based on the facts of this Action
23 (Hawkins Decl. ¶ 18(g).)

24 h. Lab. Code § 2699 (PAGA Claim)

25 Plaintiff’s’ claims under PAGA are primarily predicated on or derivative of the rest and
26 meal break claims. The estimate maximum PAGA penalty was calculated as \$ 510,000. This
27 figure attributes a \$100 penalty to each of the estimated 5,100 pay periods in scope during the
28 PAGA period. The figure also assumes that there is a 100% violation rate during the PAGA

1 period, such that every single pay period in question involved at least one Labor Code violation,
2 despite disputes regarding Defendant's liability. However, PAGA claims under the facts and
3 circumstance of this case may result in no award or at best a very minimal award by the trial
4 court. See specifically §2699(e)(2) which states in its pertinent part:

5 "... a court may award a lesser amount than the maximum civil penalty amount
6 specified by this part if, based on the facts and circumstances of the particular case, to do
7 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

8 For instance, in *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a
9 federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%,
10 because the court found maximum penalties "unjust" because the employees had suffered no
11 injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code
12 violations are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5 7 (2nd Dist.
13 Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County
14 Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist.
15 LEXIS 48557, *40 43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

16 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each
17 of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.
18 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff
19 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of
20 the Labor Code by the defendant."). Here, Plaintiff would need to prove that each PAGA
21 Aggrieved Employee suffered all violations for each pay period the employee worked. As
22 discussed herein, the nature of the PAGA based claims (i.e. rest break, meal period, wage
23 statement, failure to pay all wages owed and to timely pay wages) and Defendant's asserted
24 defenses thereto present a risk that some or all of the PAGA penalties sought may not be
25 awarded. Given the nature of these claims, as analyzed above, Class Counsel believes it to be
26 likely that if there would be any award it would be a minimal amount. Therefore, the amount of
27 \$25,000 (which has been reserved for the PAGA claim) is both fair and reasonable (Hawkins
28 Decl. ¶ 18(h)).

1 Through his counsel, Plaintiff took into consideration the significant risks that class
2 certification could be denied on the central claim, or that a merits decision on the central claim
3 would not favor the Class. Plaintiff has considered the expense and length of continued
4 proceedings necessary to continue the Action against Allcom through trial and any possible
5 appeals. Plaintiff is also aware of the burdens of proof necessary to establish liability for the
6 claims asserted in the Action, Allcom's defenses thereto, and the difficulties in establishing
7 Plaintiff's damages. (Hawkins Decl. ¶ 19.)

8 The proposed Settlement requires Defendant to pay each Class Member who does not opt
9 out a portion of the Net Settlement Amount as specifically set forth in the Settlement Agreement.
10 (Hawkins Decl. ¶ 20.) The amount to be paid to the Class is undoubtedly fair, adequate and
11 reasonable especially in light of the significant risk to Plaintiff and Class Members in continuing
12 with the litigation and not prevailing on class certification or at trial. (*Id.*)

13 For all the foregoing reasons, the proposed Settlement Agreement is fair, adequate and
14 reasonable, and is in the best interests of the Class Members.

15 C. **The Class Representative Payment and Class Counsel Fees Are Reasonable**
16 **and Should be Awarded**

17 The Settlement Agreement provides for an award to be paid to the Class Representatives.
18 The primary purpose is to provide Plaintiff Eduardo Rivera an enhancement payment, taking into
19 consideration the risks, time, effort and expenses incurred by him in coming forward to provide
20 invaluable information and negotiate and litigate this matter on behalf of all Class Members.
21 (Hawkins Decl. ¶ 21.) Plaintiff has actively participated in this litigation by providing significant
22 supporting documents and information and assisting counsel in developing information necessary
23 to litigate and settle this case which has resulted in a favorable settlement for the putative Class
24 Members. (*Id.*) Thus, the payment of \$6,000.00 to the Class Representative represents a small
25 portion of the aggregate settlement amount and should be awarded.

26 Further, as will be discussed in more detail in Plaintiff's motion for final approval of the
27 Settlement, class counsel fees in the amount of \$150,000 is reasonable within California's
28

1 standard benchmark and well within the range customarily approved by the California courts in
2 comparable class actions.

3 **VI. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE**

4 In addition to such terms as class definition, settlement amounts and payment procedures,
5 the Settlement Agreement reached between the Parties contains a provision to which the Parties
6 stipulate to the Court's provisional certification of the Class, but do so for the purposes of this
7 settlement only. Plaintiff now requests this Court to provisionally certify the Class.

8 It is well established that trial courts should use a lower standard for determining the
9 propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor*
10 *Co.*, (1996) 48 Cal.App.4th at 1794, 1807, fn. 19.) Under California law, a class action is
11 appropriate when the Class is ascertainable and there is a “well defined community of interest in
12 the questions of law and fact affecting the parties to be represented.” (Code Civ. Proc., §382;
13 *Dunk*, 48 Cal. App. 4th at 1806.) State law requirements under *California Code of Civil*
14 *Procedure* section 382 for class certification largely mirrors *Federal Rules of Civil Procedure*
15 Rule 23 – namely, numerosity and typicality of the class representative’s claims, adequacy of
16 representation, predominance of common issues and superiority. As discussed below, although
17 Defendant adamantly disputed and continues to dispute Plaintiff’s ability to certify a litigation
18 class, all of the requirements of certification for settlement purposes are met for the proposed
19 settlement Class.

20 **A. The Proposed Class is Ascertainable**

21 Here, the proposed class is ascertainable because all of the Class Members are/were
22 employed directly by Allcom and received their compensation directly from Allcom. The Class
23 Members have been identified through Defendant’s employee and personnel files. (*See Rose v.*
24 *City of Hayward* (1981) 126 Cal. App. 3d 926, 932 [“Class Members are ‘ascertainable’ where
25 they may be readily identified without unreasonable expense or time by reference to official
26 records”].)

1 **B. Numerosity of the Class is Sufficient**

2 If the class is sufficiently large that joinder of all members is impractical or that individual
3 joinder is impractical, the numerosity requirement is met. (*Hebberd v. Colgrove* (1972) 28
4 Cal.App.3d 1017, 1030.) Here, the proposed class consists of approximately 157 members,
5 consisting of current and former employees of Defendant. Therefore, joinder of individual claims
6 would be impractical and the numerosity requirement is met.

7 **C. There are Common Questions of Law and Fact to the Class**

8 Commonality is met if there are common questions of fact and law to the class. (*Hanlon v.*
9 *Chrysler Corp.* 150 F.3d at 1019 [“The existence of shared legal issues with divergent legal
10 factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal
11 remedies within the class”].) Here, Plaintiff alleges that the proposed Class Members’ claims all
12 stem from the same alleged conduct. Specifically, Plaintiff alleges that Allcom violated California
13 wage and hour law by (1) failure to pay lawful wages including overtime wages; (2) failure to
14 provide lawful meal periods or compensation in lieu thereof; (3) failure to provide rest periods or
15 compensation in lieu thereof; (4) failure to timely pay wages due at termination; (5) knowing and
16 intentional failure to comply with itemized employee wage statement provisions (6) failure to
17 indemnify employee expenses; and (7) violations of the unfair competition law. Plaintiff seeks
18 recovery of all alleged wages, premium wages, penalties and interest pursuant to the California
19 Labor Code, the California Industrial Welfare Commission (“IWC”) Wage Orders, Bus. & Prof.
20 Code § 17200 *et seq.*, and PAGA. Although Defendant disagrees with Plaintiff’s contentions for
21 purposes of certifying a litigation class, for purposes of a settlement class, these circumstances
22 create questions of law and fact common to all proposed Class Members.

23 **D. The Typicality Requirement is Met**

24 The typicality requirement is met if the claims of the named Class Representative are
25 typical of those of the class, though “they need not be substantially identical.” (*Hanlon* 150 F.3d
26 at 1020.) Factual differences may exist between the Class and the Class Representative(s) so long
27 as the claims arise from the same events or course of conduct and are based on the same legal
28 theories. (*Id.*) Here, the claims of the Class Representative are typical of the other Class Members

1 because they arise from the same factual basis and are based on the same legal theories as those
2 applicable to all Class Members. (*Wherner v. Syntex* (N.D. Cal. 1987) 117 F.R.D. 641, 644.)
3 Thus, for purposes of a settlement class, the typicality requirement is met.

4 **E. The Adequacy Requirement is Met**

5 If the named representative and his or her counsel have no interests adverse to the interest
6 of the proposed Class Members and are committed to vigorously prosecuting the case on behalf
7 of the class, then the adequacy requirement is met. (*McGhee .v Bank of America*, (1976) 60 Cal.
8 App. 3d 442,450.) Here, under the proposed settlement, the Class Representative will receive a
9 reasonable award for their time and efforts assisting counsel with factual issues surrounding the
10 case and risk incurred in bringing this action on behalf of the Class Members. Other than this
11 specific payment, all Class Members will receive a percentage of the Net Settlement Amount
12 based on his or her respective number of covered work weeks. Therefore, no “settlement
13 allocation” questions are raised. (*Hanlon* 150 F.3d at 1020.)

14 Any Class Member who requests to be excluded from the Settlement Agreement will not
15 be entitled to any recovery under the Settlement Agreement and will not be bound by its terms or
16 have any right to object, appeal or comment on it. Nothing in the Settlement Agreement can be
17 construed as a waiver of any defense that Defendant or the Released Parties have or could assert
18 against anyone who timely serves a Request for Exclusion. (Settlement Agreement p. 8 ¶ 52(g)
19 (iii)). As a result, there is no conflict of interest between the Class Representative and the Class
20 Members. Additionally, the Class Representatives and their counsel have been committed to
21 prosecuting this action on behalf of the Class.

22 **F. Common Issues Predominate and Class-wide Settlement is Superior to Other**
23 **Available Methods of Resolution**

24 Class certification is authorized where common questions of law and fact predominate
25 over individual questions and where class-wide treatment of a dispute is superior to individual
26 litigation. (*Richmond v. Dart Industries, Inc.*, (1981) 29 Cal.3d 462, 469.) The test is whether the
27 proposed class is sufficiently cohesive to warrant adjudication by representation. (*Hanlon, supra*,
28 at p. 1022.) Plaintiff contends that the proposed Class in this case is sufficiently cohesive, since

1 all Class Members share a “common nucleus of facts and potential legal remedies.” Specifically,
2 all of the Class Members and the Class Representative seek compensation for alleged unpaid
3 wages, premium wages for failure to provide compliant meal and rest breaks, as well as penalties
4 and interest for the allegations described herein; common questions about compensation or lack
5 thereof for worked performed by Class Members predominate over individual questions, and the
6 Class Members’ potential legal remedies are identical. (*Id.*) Although Defendant disagrees with
7 Plaintiff’s’ contentions, it has agreed the Class may be certified for settlement purposes only.

8 Additionally, particularly in the settlement context, class resolution is superior to other
9 methods for the fair and efficient adjudication of the controversy. (*Hanlon*, 150 F. 3d at p. 1023;
10 *Dunk, supra*, 45 Cal. App. 4th at p. 1087.) The superiority requirement involves a “comparative
11 evaluation of alternative mechanisms of dispute resolution.” (*Hanlon, supra*, at p. 1023.) Here,
12 the alternative methods of resolution are a plethora of individual claims from potentially over
13 115 plaintiffs. The class action device can thus conserve judicial resources by avoiding the waste
14 and delay of repetitive proceedings and prevent inconsistent adjudication of similar issues and
15 claims. (*Sav-On Drug Stores, Inc. v Superior Court* (2004) 34 Cal. 4th 319, 340; *Bell v Farmers*
16 *Ins. Exchange* (2004) 115 Cal.App.4th 715, 741.) Therefore, settlement on a class-wide basis is
17 superior.

18 **VII. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

19 The Notice is attached as Exhibit A to the Settlement Agreement. The Notice provides the
20 requisite, pertinent information to Class Members and the options available to them. Should a
21 Class Member wish to exclude themselves from the Settlement, they can send a request for
22 exclusion to the settlement administrator. Should a Class Member wish to object to the
23 Settlement, they can object as described in the Notice. If a Class Member does nothing in
24 response to the Notice, the Class Member will be mailed an individual settlement payment.

25 **A. The Class Notice Satisfies Due Process**

26 California statutory and case law vests the Court with broad authority to fashion an
27 appropriate notice process. (Cal. Rules of Court 3.760 *et seq.*) A proposed method of notice of a
28 proposed settlement is fair, adequate and reasonable if it has “a reasonable chance of reaching a

1 substantial percentage of the Class Members. (*Cartt v. Superior Court*, (1975) 50 Cal. App. 3d
2 960, 974.) The Notice plan described herein entails mailing the Notice to all known and
3 reasonably ascertainable Class Members based on Defendant’s payroll records and provides for a
4 reasonable chance of reaching a significant percentage of Class Members. (See section III (D)
5 herein.) Further, such individual notice by first class mail is routinely approved as consistent with
6 due process. (See, e.g., MANUAL at §§21.311, 21.312; Wright & Miller, Fed. Practice &
7 Procedure §1797.6 [“Of course, notice by mail to all of the identified Class Members . . . will
8 suffice.”] (citing cases).) The Notice is consistent with the class certification notices approved by
9 numerous state and federal courts and is the best notice practicable under circumstances of this
10 case.

11 **B. The Proposed Class Notice is Accurate and Informative**

12 Not only is the manner of the proposed notice proper, so too is the content of the said
13 notice. The proposed notice provides information on the meaning and the nature of the proposed
14 settlement, the terms and provisions of the settlement, the relief the settlement will provide the
15 Class Members, the application of Plaintiff’s’ counsel for reimbursement of costs and attorneys’
16 fees from the settlement amount, the date, the time and place of the Final Fairness and Approval
17 Hearing, and the procedure and deadlines for opting out of the Settlement or for submitting
18 comments and objections. (Cal. Rule of Court 3.769(f).)

19 The Notice also fulfills the requirement of neutrality in class notices. (2 NEWBERG
20 §8.39.) It summarizes the proceedings to date and the terms and conditions of the settlement in an
21 informative and coherent manner, in compliance with the MANUAL’S statement, “the notice
22 should be accurate, objective, and understandable to class members.....” (MANUAL at §30.21.)
23 The Notice clearly states the settlement does not constitute an admission of liability by Allcom
24 and recognizes the Court has not ruled on the merits. It also states the final settlement approval
25 decision has yet to be made. Accordingly, the Notice complies with the standards of fairness,
26 completeness and neutrality required of a settlement class notice disseminated under the authority
27 of the Court. (F.R.C.P. 23(c)(2).)

Moreover, the Notice comports with CA Rules of Court, Rule 3.766(d). As per Rule 3.766, the contents of the Notice providing for an opt out procedure for the class members must include the following:

- (1) A brief explanation of the case, including the basic contentions or denials of the parties;
- (2) A statement that the Court will exclude the member from the class if the member so requests by a specified date;
- (3) A procedure for the member to follow in requesting exclusion from the class;
- (4) A statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and
- (5) A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel.

The Notice contains the information required under Rule 3.766(d). (See Ex. A attached to Settlement Agreement.)

VIII. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court enter the Proposed Order Granting Preliminary Approval submitted concurrently herewith, and thus:

1. Grant preliminary approval of the Settlement Agreement, and certify the Settlement Class for the purposes of settlement only;
2. Confirm named Plaintiff Eduardo Rivera as the Class Representative and James R. Hawkins and Isandra Fernandez of the law firm of JAMES HAWKINS, APLC as Class Counsel;
3. Approve and appoint Simpluris, Inc. as Settlement Administrator;
4. Enter an Order preliminarily approving the proposed settlement and approving the Notice; and

5. Schedule the Final Approval Hearing Date on _____, 2022; (to be determined by the Court at the hearing for preliminary approval of settlement).

Respectfully submitted,

Dated: March 2, 2022

JAMES HAWKINS, APLC


James R. Hawkins, Esq.
Isandra Y. Fernandez, Esq.
Kacey E. Cook, Esq.

Attorneys for Plaintiff
Eduardo Rivera

1 **PROOF OF SERVICE, COUNTY OF ORANGE**

2 I am a resident of the State of California, County of Orange. I am over the age of eighteen
3 years and not a party to the within action. My business address is 9880 Research Drive., Suite 200,
4 Irvine, California 92618.

5 On March 2, 2022, I served on the interested parties in this action the following document(s)
6 entitled:

7 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
8 **APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATION OF JAMES R.**
9 **HAWKINS IN SUPPORT THEREOF; [PROPOSED] ORDER**

10 **DECLARATION OF JAMES R. HAWKINS IN SUPPORT OF MOTION FOR**
11 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

12 **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION**
13 **SETTLEMENT**

14 **[XX] BY ELECTRONIC SERVICE:** Based on a court Order or an agreement by the parties to
15 accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the
16 email address jocelyn@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the
17 Service List below. I did not receive, within a reasonable time after the transmission, any electronic
18 message or other indication that the transmission was unsuccessful.

19 **SERVICE LIST**

20 *Please See Attached Page*

21 **[X] STATE:** I declare under penalty of perjury, under the laws of the State of California, that the
22 above is true and correct.

23 Executed on March 2, 2022, at Irvine, California.

24 /s/Jocelyn Mateo

25 Jocelyn Mateo

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8 *Attorneys for Defendant*
9 *ALLCOM ELECTRIC, INC.*

10 California Labor and Workforce
11 Development Agency
12 Attn: PAGA Administrator
13 1515 Clay Street, Ste. 801
14 Oakland, CA 94612
15 [http://www.dir.ca.gov/Private-Attorneys-](http://www.dir.ca.gov/Private-Attorneys-General-Act)
16 [General-Act](http://www.dir.ca.gov/Private-Attorneys-General-Act)
17 (Via LWDA Website)